

**COMMONWEALTH OF PUERTO RICO
TELECOMMUNICATIONS REGULATORY BOARD
OF PUERTO RICO**

FCC's Triennial Review Order)	Case Number JRT-2003-CCG-0004
)	
)	Re: Review of High Capacity Business
)	Customer Local Circuit Switching
)	

**DIRECT TESTIMONY OF
DAVID L. BOGATY
ON BEHALF OF WORLDNET TELECOMMUNICATIONS, INC.**

1 **Q. What is your name and business address?**

2

3 A. My name is David L. Bogaty. I am the founder and president of WorldNet
4 Telecommunications, Inc. My business address is Plaza Caparra, Ave Roosevelt, Suite
5 206, San Juan, Puerto Rico 00922.

6

7 **Q. What is your professional background and experience?**

8

9 A. I have approximately twelve years of professional experience in the telecommunications
10 industry. From 1991 to 1993, I served as a financial analyst at Chase Manhattan Bank in
11 the North American Corporate Finance Division, Media and Telecommunications Group.
12 In 1993, I helped to create and found MetraCom Corporation a local and long distance
13 telecommunications provider in Boston, Massachusetts. As Director of Business
14 Development at MetraCom, I helped build the company from \$0 to over \$18,000,000 in
15 current annual revenues, primarily concentrating on the resale of ILEC local and long
16 distance telephone service.

17

18 In 1996, I left MetraCom to start WorldNet, the first full reseller of telecommunications
19 services in Puerto Rico. Since 1996, I have helped build WorldNet into a full service
20 telecommunications provider in Puerto Rico, offering customized, upgraded, and
21 personalized telecommunications services to business and residential customers
22 throughout the island.

23

24 **Q. What is the purpose of your testimony?**

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26 A. The purpose of my testimony is to provide the Board information as it considers whether
27 to seek a waiver of the FCC's finding of no impairment with regard to the availability of
28 unbundled PRTC local circuit switching for DS1 capacity and above loops. I am not a
29 lawyer or a regulatory expert. However, based on my businessman's understanding of

1 the rules and issues, it seems clear that impairment *does* exist in Puerto Rico, a very
2 nascent competitive market, and that, consequently, the Board *should* seek such a waiver.

3
4 **Q. Are you familiar with the criteria that the FCC has instructed the Board to use in**
5 **challenging its finding of no impairment?**

6
7 A. I understand generally that the FCC has provided two basic tasks for the Board. First, the
8 Board must divide Puerto Rico into appropriate markets for high capacity local
9 switching. Second, the Board must determine whether there are operational or economic
10 barriers in those markets. For operational barriers, the FCC has instructed that the Board
11 to consider the ability of PRTC to provide UNE loops, collocation, and cross-connects to
12 competitors. For economic barriers, the FCC has instructed the Board to consider the
13 cost of entry into a market (including those caused by operational barriers), potential
14 revenues, and prices that competitors will likely be able to charge for high capacity
15 services.

16
17 **Q. Why do you believe that the Board should petition for a waiver of the FCC's**
18 **finding?**

19
20 A. Simply put, there are significant operational and economic barriers in Puerto Rico
21 markets for providers like WorldNet to deploy their own high capacity switching.

22
23 **Q. What are these barriers?**

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25 A. I believe that several of these barriers have been identified by other WorldNet-sponsored
26 witnesses, including, but not limited to, the fact that PRTC owns about 98% of the high
27 capacity local switches in Puerto Rico and that Puerto Rico simply does not yet have the
28 experience or supporting infrastructure in place to make competitor high capacity switch
29 deployment operationally or economically feasible. In my opinion, however, the most
30 obvious operational and economic barriers to effective competitor switch deployment in
31 Puerto Rico can be traced to one thing – PRTC.

32
33 **Q. How is PRTC the source of operational and economic barriers?**

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35 A. PRTC is neither prepared nor equipped to make competitive facilities deployment
36 operationally and economically feasible. Indeed, in my opinion, PRTC is so far behind
37 other ILECs in its efforts to provide services and facilities to competitors that the Board
38 probably has one of the most obvious and best cases for rebuttal of the FCC's no
39 impairment finding than any other jurisdiction that is subject to the FCC's new rules. It
40 is not even a close call.

41
42 **Q. Can you be more specific?**

43
44 A. Yes. The FCC has instructed state commissions to examine whether an ILEC can
45 adequately provide UNE loops, collocation, and cross-connects. In most jurisdictions,
46 state commissions will be faced with extensive records documenting years of ILEC

process development and provisioning history for these things. In Puerto Rico, the Board is faced with one simple fact (based on the discovery responses so far in this proceeding) -- PRTC has not completed a single order for stand-alone UNE loops, collocation, or cross-connects. Indeed, even if PRTC has completed a few orders for these services and facilities of which I am not aware, I doubt it has completed many or has much experience with these things at all. Moreover, it is my understanding that PRTC has not only not provided these things, the only orders that it has received for these services and facilities promptly resulted in a formal complaint to the Board alleging undue PRTC delay and grossly inadequate PRTC performance.

Q. What does PRTC's inexperience in providing UNE loops, collocation, and cross-connects mean in this proceeding?

A. I believe it means that the Board has an obvious case for waiver of the FCC's no impairment finding. Simply put, according to the discovery responses submitted so far in this proceeding, PRTC has not provided a single stand-alone UNE loop to its competitors. It has not finished a single collocation for its competitors. It has not performed a single cross-connect for its competitors. Instead, the only documented track record that PRTC has established on these three focal activities in the Board's analysis is a formal Board complaint about the inadequacy of new and completely untested PRTC processes and procedures that PRTC is essentially still making up as it goes. In looking at the analysis before the Board, it is difficult to imagine any stronger showing of an operational and economic barrier than an ILEC that has absolutely no experience in successfully providing UNE loops, collocation, or cross-connects.

Q. Do you think it would be reasonable to assume that, despite its inexperience, PRTC is nevertheless presently able to provide UNE loops, collocation, and cross-connects effectively?

A. No. First, the only evidence available shows that PRTC is not ready to provide these things. PRTC has had documented problems with all of the orders for UNE loops, collocation, and cross-connects that it has received to date.

Second, PRTC's processes and procedures for providing UNE loops, collocation, and cross-connects (whatever they may ultimately be) are new, untested, and (to a large extent) unknown. In other jurisdictions, ILECs have spent years developing and refining their processes and procedures for these activities. It is unrealistic to assume that PRTC will become anywhere near as efficient or capable as those other providers in the course of a few weeks. In the end, competitors in Puerto Rico will be forced to endure the initial start-up delays and costs that competitors ordering the same services and facilities in other jurisdictions simply no longer have to face.

Third, and perhaps most importantly, I believe that it would be unreasonable to assume that PRTC will all of a sudden provide UNE loops, collocation, and cross-connects effectively when in the past PRTC has had an abysmal track record in providing other wholesale services to its competitors.

1
2 **Q. What do you mean when you refer to PRTC's poor track record with competitors?**
3

4 A. For example, PRTC has been providing services to WorldNet for resale for over four
5 years. Yet, despite continuing complaints, meetings, and promises from PRTC, PRTC is
6 still repeating many of the same billing errors that WorldNet encountered on its initial
7 invoice from PRTC over four years ago. In fact, currently, WorldNet is forced to make
8 approximately 5,000 manual adjustments to PRTC invoices *each month*. In short, PRTC
9 has been doing resale billing for over four years and it still has not committed the
10 resources to make the system work correctly or efficiently.
11

12 Similarly, in the shadow of a pending arbitration petition, PRTC reluctantly agreed in
13 2001 to provide UNE-P circuits to WorldNet starting almost one year later on October 1,
14 2002. In the months leading up to October 1, 2002, WorldNet expended significant time
15 and resources in an effort to work cooperatively with PRTC in preparing for the
16 deployment of UNE-P. These efforts were not matched by PRTC, prompting another
17 filing by WorldNet with the Board to ensure that PRTC would satisfy its agreed
18 obligation to provide UNE-P by October 1, 2002. WorldNet's complaint spurred some
19 PRTC effort, resulting in the tacit completion of some WorldNet DS0-level UNE-P
20 orders by PRTC by the October 1, 2002 deadline. The completion of these initial orders,
21 however, was plagued with significant and costly process breakdowns that, in some
22 cases, are still occurring over a year later. These breakdowns include widespread billing
23 errors, completely unnecessary disconnections of WorldNet customer lines, and a billing
24 system that, according to PRTC, was (and is still) not yet configured to charge WorldNet
25 based on WorldNet customers' actual usage of UNE-P lines.
26

27 In short, based on PRTC's past efforts and continuing problems in providing other
28 services and facilities to competitors in Puerto Rico, it is almost laughable to assume that
29 PRTC will suddenly provide UNE loops, collocation, or cross-connects in an
30 operationally or economically efficient manner.
31

32 **Q. Are resale billing and UNE-P the only examples of PRTC service failures?**
33

34 A. No. For more examples, I would direct the Board to WorldNet's filings in JRT-2001-
35 AR-0002, JRT-2002-Q-0076, and JRT-2003-SC-0005.
36

37 Notably, I used the specific examples above because I think they illustrate particularly
38 well how, even after two to four years of experience and opportunity, PRTC has failed to
39 devote the resources or attention necessary to provide even the most basic services and
40 facilities on an operationally or economically efficient basis. These examples also
41 demonstrate how far PRTC is behind other ILECs in its provision of required services
42 and facilities to competitors – a fact that I believe makes this case one of the easier cases
43 for rebuttal that the FCC will see.
44

45 In my opinion, PRTC is determined to block the advance of competition, or at least
46 willing to let it languish by starving its wholesale efforts of resources. It is commonly

1 said among the competitors that PRTC's negotiation strategy is to delay, delay, delay
2 while trying to drain competitors of their resources. In fact, because of this common
3 perception, WorldNet saved its resources for one year prior to beginning negotiations on
4 its last interconnect agreement and was forced to use its entire contingency fund.
5 Moreover, after this WorldNet was forced to file a complaint at the board one year later
6 to force PRTC to comply with its contractual obligations. This forced WorldNet to spend
7 an additional \$200,000. And, even after all of this, PRTC has still not adequately
8 implemented UNE-P in accordance with its contract obligations. The invoicing is
9 consistently filled with errors, has only very recently been automated, and PRTC has yet
10 to reconcile the first month of UNE-P invoicing disputes. As recently as October 28,
11 2003, PRTC just informed us that in the transition to UNE-P billing it has been unable to
12 invoice some of the charges and will be forced to invoice for five months back billing.
13 Further, there are no official pre-ordering and ordering procedures and there is extremely
14 limited and inadequate OSS for UNE-P provisioning. All of these deficiencies still exist
15 despite the obligations to be prepared for UNE-P since 1996 and after a two year old
16 active contract to provide UNE-P to WorldNet.

17
18 This is meant to serve as an illustration of how PRTC responds to competitive requests
19 and obligations. I have no reason to believe that PRTC will perform differently now. In
20 fact, I believe that history serves as strong evidence that they will perform in the same
21 manner in its obligations to provide loops, cross connects and collocation. Intentionally
22 or not, PRTC is not prepared to provide these services and facilities and has shown no
23 indication that it will in the near future without a competitor willing to spend hundreds of
24 thousands or millions of dollars and fight for at least a year.

25
26 **Q. Is PRTC's inexperience with UNE loops, collocation, and cross-connects the only**
27 **source of operational or economic barriers caused by PRTC?**

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29 A. No. To begin with, PRTC has either had documented problems with or does not have
30 much if any experience in providing other services or cooperation that are necessary for
31 competitors like WorldNet to deploy their own high capacity local switching effectively
32 in Puerto Rico. For example, PRTC has been the subject of a complaint filed with the
33 Board alleging that PRTC is not providing local number portability to competitors.
34 Similarly, with only a handful of competitor switches deployed in Puerto Rico, PRTC has
35 little to no demonstrated experience or track record in cooperating with competitors
36 wanting to deploy additional facilities to gain or share access to easements or rights-of-
37 way provided by third parties.

38
39 **Q. Are there any other operational or economic barriers caused by PRTC?**

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41 A. Yes. The fact that PRTC is so far behind other ILECs does not just make this an easy
42 case because PRTC is not ready to provide UNE loops, collocation, or cross-connects
43 effectively. It also makes this an easy case as a matter of policy.

44
45 In the rest of the jurisdictions covered by the FCC's no impairment finding, competitive
46 carriers have arguably had the benefit of the scheme that Congress created to promote

1 competition. In that scheme, Congress sought to give competitors mechanisms like resale
2 and UNEs to establish a market presence that would allow them to transition to facilities-
3 based service. In Puerto Rico, however, competitors have not yet had this opportunity.
4 Although PRTC has offered resale for several years, it did not provide a UNE to a
5 competitor in Puerto Rico until late last year (i.e., more than 7 years after it was required
6 by law to do so). And, and perhaps more importantly, PRTC has still (despite numerous
7 pending orders) not provided to a competitor a single high capacity UNE circuit.

8
9 At a minimum, the unavailability of UNE-based service as a transition to facilities-based
10 service (as Congress intended) has created an obvious operational and economic barrier
11 for competitors in Puerto Rico that competitors in almost every other jurisdiction simply
12 do not face. Simply put, PRTC has not given competitors in Puerto Rico the opportunity
13 to establish a market presence through the all of the tools that Congress provided. And,
14 in this proceeding, it would be completely absurd to preserve a presumption in Puerto
15 Rico markets that competitors no longer need a transition mechanism that PRTC has not
16 even made available to them yet.

17
18 The FCC's presumption of no impairment simply does not reflect the reality of a
19 competitive market that PRTC has kept years behind the markets served by its ILEC
20 counterparts in the states. Substantial and unique operational and economic barriers exist
21 in Puerto Rico markets, and the Board should seek an immediate waiver of the FCC's no
22 impairment finding at the conclusion of this proceeding. Puerto Rico is a perfect
23 example of why the FCC gave the states and territories the opportunity to rebut the
24 national finding no impairment.

25
26 **Q. Does this conclude your testimony?**

27
28 A. Yes, although I reserve the right to amend or supplement it based on discovery
29 information that WorldNet has yet to receive from PRTC and other parties in this
30 proceeding.